No. 85-138 (2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

ROBERT ABRAMS,
Attorney General of the State of New York,
Petitioner,

against

MICHAEL ROMAN,
Respondent.

SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Question Presented

Whether the Sixth and Fourteenth Amendments to the Constitution authorize a Federal court to vacate a state criminal judgment of conviction, pursuant to 28 U.S.C. § 2254, solely upon allegations that the state prosecutor exercised his peremptory challenges to excuse whites from the trial jury where the trial jury which rendered the conviction consisted of three whites, three hispanics, and six blacks.

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Jurisdiction

This Supplemental Petition for a Writ of Certiorari Before Judgment is submitted pursuant to Supreme Court Rule 22.

Supplemental Reason For Granting the Writ

In addition to the reasons offered in the Petition for a Writ of Certiorari Before Judgment, the Court should also grant the petition because of the fact that the New York City, Kings County, prosecutor who represents the state's interests in *McCray* v. *Abrams*, 750 F.2d 1113 (2d Cir. 1984) *reh'g en banc denied* 756 F.2d 277 (2d Cir. 1985), *cert. pending sub nom. Abrams* v. *McCray* No. 84-1426, has submitted an amicus brief in *Batson* v. *Kentucky*, No. 84-6263 *cert. granted* April 22, 1985, in which she agrees with the defendant on the merits of the underlying constitutional question at issue in both "New York City" cases.

Because the State's position is fundamentally different in this New York City case, the Court should grant the Writ of Certiorari Before Judgment in this case in order to give it the benefit of hearing the contrary views of another large urban prosecutor before it decides the question presented in *Batson* v. *Kentucky*, *supra*. Since the amicus brief will have already expanded the *Batson* facts beyond its record to include a New York City case, and since this case presents a live constitutional controversy with regard to the underlying merits of the Sixth and Fourteenth Amendment questions at issue in the 28 U.S.C. § 2254 petitions in both New York City cases, it would be in everyone's interest for the Court to consider the scope of Federal Habeas review of the instant allegations in the context of a live controversy at the time it considers the contrary view of the *McCray* prosecutor in the course of deciding the question presented in *Batson* v. *Kentucky*.

Conclusion

For the foregoing reasons and for the reasons stated in the Petition docketed on July 22, 1985, the Petition for a Writ of Certiorari Before Judgment should be granted.

Respectfully submitted,

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